

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PEDRO DE LA CRUZ-AGUILAR,

Petitioner,

v.

MERRICK B. GARLAND,

Respondent.

Civil Action No.
9:21-CV-1233
(TJM/ATB)

PEDRO DE LA CRUZ-AGUILAR
Petitioner, pro se

ANDREW T. BAXTER
United States Magistrate Judge

ORDER

On or about November 12, 2021, pro se petitioner Pedro De La Cruz-Aguilar ("petitioner"), an inmate currently confined in Ray Brook Federal Correctional Institution, commenced this action by filing a writ of mandamus. Dkt. No. 1 ("Petition"). Because petitioner did not pay the required filing fee or apply to proceed in forma pauperis ("IFP"), the Court issued an Order on November 17, 2021, closing the case and informing petitioner that, if he wished to pursue this action, he must comply with the filing fee requirements for commencing an action in this District. See Dkt. No. 2 ("November Order"). The Court received the full filing fee on petitioner's behalf on or about December 13, 2021, and the Clerk reopened the action on that date. Dkt. No. 3. The Clerk has now forwarded the petition to the Court for review pursuant to 28 U.S.C. § 1915A.

Petitioner's application for a writ of mandamus asks the Court to declare petitioner a legal permanent resident for immigration and citizenship purposes. Petition at 3. Petitioner

has submitted a number of documents in support of his claim. See Dkt. No. 1-1. Petitioner names the United States Attorney General, Merrick Garland, as the respondent. Petition at 1.

Mindful of the Court's obligation to liberally construe a pro se litigant's pleadings, see, e.g., *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 191 (2d Cir. 2008), the Court will require a response to the petition from respondent Garland. In so ruling, the Court expresses no opinion as to whether the petition can withstand a properly filed dispositive motion.

WHEREFORE, it is hereby

ORDERED that the petition for writ of mandamus (Dkt. No. 1) is **ACCEPTED for filing** for purposes of 28 U.S.C. § 1915A; and it is further

ORDERED that, in order to effectuate service of process on the respondent and the United States (in accordance with Rule 4(i) of the Federal Rules of Civil Procedure), petitioner must, **within 30 days** of the date of this Order, request service by the United States Marshal Service ("USMS") by paying the service fee (\$82.65) in advance by certified check or money order payable to the Clerk of the Northern District of New York. Petitioner may, in the alternative, request IFP status for the sole purpose of effectuating service by the USMS. If petitioner wishes to seek IFP status, he must comply with the requirements set forth in the Court's November Order; and is further

ORDERED that, upon receipt of the service fee (or upon petitioner obtaining IFP status for the purpose of service only), the Clerk shall forward the summonses, along with a copy of the petition for writ of mandamus, to the USMS for service of process on respondent Garland, the United States Attorney for the Northern District of New York, and the United States Attorney General in Washington, D.C. The Clerk shall also forward a courtesy copy of

the summonses and petition, along with a copy of this Order, to the Office of the United States Attorney's Office for the Northern District of New York; and it is further

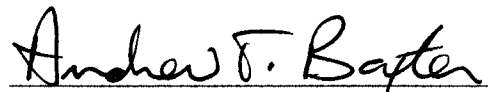
ORDERED that, if petitioner fails to submit the service fee or seek IFP status (as directed above), the USMS will not attempt service upon the respondent, and the Clerk will forward the summons to petitioner, and he will thereafter be responsible for serving the respondent and the United States; and it is further

ORDERED that, once respondent Garland has been served, he shall respond to the petition in accordance with the Federal Rules of Civil Procedure; and it is further

ORDERED that all pleadings, motions, and other documents relating to this action must bear the case number assigned to this action and be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367. Petitioner must comply with all requests by the Clerk's Office for any documents that are necessary to maintain this action. All parties must comply with Rule 7.1 of the Local Rules of Practice for the Northern District of New York in filing motions; motions will be decided on submitted papers, without oral argument, unless otherwise ordered by this Court. **Petitioner is also required to promptly notify the Clerk's Office and all parties or their counsel, in writing, of any change in his address; his failure to do so may result in the dismissal of this action;** and it is further

ORDERED that the Clerk serve a copy of this Order, as well as a copy of the November Order, on petitioner in accordance with the Local Rules of Practice for this Court.

Dated: February 7, 2022


Andrew T. Baxter
U.S. Magistrate Judge